

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2020-224-C

IN RE: Michael S. Madden,)	
)	
Complainant/Petitioner,)	RESPONDENTS'
)	REPLY TO
v.)	COMPLAINANT'S
)	RESPONSE TO
Charter Spectrum (Charter Communications))	RESPONDENTS'
)	MOTION TO DISMISS
Defendants/Respondents)	

Pursuant to 10 S.C. Code Ann. Regs. 103-829 (2020), Respondents Charter Fiberlink-SC CCO, LLC (“Charter Fiberlink”) and Charter Communications, LLC, d/b/a Spectrum, (“Charter Communications”)¹ (collectively, “Respondents”) hereby reply to Complainant Michael S. Madden’s (“Mr. Madden”) Response to Respondents’ Motion to Dismiss, dated September 28, 2020, and due to the undisputed and indisputable facts in this case showing lack of subject matter jurisdiction, respectfully request that the South Carolina Public Service Commission (“Commission”) grant Respondents’ Motion to Dismiss without oral argument. *In Re: Robert B. Farmer – RBF Enterprises, LLC, d/b/a McDonald’s v. Palmetto Wastewater Reclamation, LLC, d/b/a Alpine Utilities*, Docket No. 2013-119-S, Order No. 2016-34, p. 14 (S.C. Pub. Service Comm’n, Jan. 8, 2016) (“It is not a mandatory requirement that oral argument be held for every

¹ Defendants note that the case is incorrectly captioned. The defendants named in the Commission’s Scheduling Notice, dated September 10, 2020, are Charter Communications, LLC and Charter Fiberlink-SC CCO, LLC.

motion, which would violate the tenant of judicial economy and ignore the common practice of court deciding matters based on the filings”).

This case arises exclusively out of an increase in Mr. Madden’s June 2020 bill amount for Spectrum TV² service following the expiration of a promotional discount.³ (Respondents’ Mot. to Dismiss, 2 – 3). This fact is not disputed in Mr. Madden’s Response, and in any event, cannot be disputed. At all times, the bill increases of which Mr. Madden complains pertained to his Spectrum TV service. *See* Exh. B to Respondents’ Mot. to Dismiss, Spectrum Bills to Mr. Madden for the March through the August 2020 billing periods (showing that the **only** increases in Mr. Madden’s bill amounts at any time relevant hereto is for Spectrum TV cable television services). At no time was the price of Mr. Madden’s voice service increased. *See id.*

For this reason alone, the complaint must be dismissed as to both Respondents for lack of jurisdiction over the subject matter.⁴ *See In Re: Savannah Valley Cablevision, Inc. v. West Carolina Rural Telephone Cooperative and West Carolina Communications, LLC*, Docket No.

² Spectrum TV offers a variety of cable television packages to customers.

³ Charter Communications notes that it has been transparent in its billing for video, internet, and television services. Indeed, Mr. Madden’s May 2020 Spectrum Bill advises on its face under “Promotion Discount” that “when you signed up for new services, you received a discounted promotional rate on your bill. ***This promotion is coming to an end beginning with next month’s statement.***” (Exh. B to Respondents’ Mot. to Dismiss at 13) (emphasis added). The June 2020 Spectrum Bill likewise advises on its face under “Important Account Update” that “the promotional period for one or more of your services has now come to an end.” *Id.* at 19. Similarly, Mr. Madden’s July 2020 bill under “Important Billing Update” advised of increases to Spectrum TV charges, specifically Spectrum TV Select and the Broadcast TV surcharge that would occur on his next bill, which they did. *Id.* at 23, 35-36.

Even if the Commission had jurisdiction to hear this matter, and it does not, Mr. Madden’s bills demonstrate that he had notice of the increases to his Spectrum TV charges of which he is complaining. This evidence contradicts his conclusory characterization of Charter Communications’ billing practices as not “reasonable and fair” and shows that Charter Communications reasonably forewarned Mr. Madden of billing changes for his Spectrum TV services.

⁴ Respondents reassert and incorporate herein by this reference their additional arguments for dismissal as to Charter Communications and Charter Fiberlink, separately, contained in the Motion to Dismiss, and state that Mr. Madden’s Response similarly does not dispute, and in any event, cannot dispute the facts in support of these additional arguments.

2003-293-C, Order No. 2004-447, 9, 11 (S.C. Pub. Service Comm’n, Sept. 24, 2004) (noting that the Commission does not regulate “digital entertainment services” like cable television); *see also* S.C. Code Ann. § 58-3-140(A) (limiting the Commission’s jurisdiction to the regulation of rates for public utility services).

While the misunderstanding between Charter Communications and Mr. Madden with regard to bill amounts for Spectrum TV services is regrettable,⁵ Mr. Madden’s bare assertion in his Response that his complaint is “tied” to a regulated utility service is simply not sufficient to defeat Respondents’ Motion to Dismiss for lack of subject matter jurisdiction. *See Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982) (“***The burden of proving subject matter jurisdiction on a motion to dismiss is on the plaintiff***”) (emphasis added); *see also Maybank v. BB&T Corp.*, 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016) (“In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules”).

Indeed, this is especially true here where the Motion to Dismiss is accompanied by unchallenged evidence⁶ indisputably showing that the only increased charges on Mr. Madden’s bills pertain solely to Spectrum TV (i.e., cable television) services ***that are not regulated by this Commission***.⁷ *See Hahn v. United States*, 313 F. App’x 582, 584 (4th Cir. 2008) (“The court in a 12(b)(1) hearing weighs the evidence to determine its jurisdiction”).

⁵ Since his complaint was filed, Charter Communications reached out to Mr. Madden in a good faith attempt to explain bill amounts and build a package of services that works for him, but these efforts at reconciliation were not successful. *See also* note 3 *supra* (explaining in detail that the May and June 2020 Spectrum Bills advised Mr. Madden of the expiration of the initial promotional discount period).

⁶ *See* (Exhs. A and B to Respondents’ Mot. to Dismiss).

⁷ Moreover, neither Respondent named in this case provides Spectrum TV or video services. These services are provided by Spectrum Southeast, LLC, an affiliate entity, that, like Charter Communications, is ***not*** a regulated telecommunications utility subject to the Commission’s jurisdiction, and therefore, is not identified as a regulated telecommunications entity by the S.C. Office of Regulatory Staff (“ORS”). *See* S.C. Office of Regulatory Staff, Regulated Telecommunications Utilities, <https://ors.sc.gov/regulated-utilities/telecommunications> (last accessed September 28, 2020).

For the foregoing reasons and for the reasons set forth in Respondents' Motion to Dismiss, Respondents respectfully request that the Commission dismiss Mr. Madden's complaint in the above-captioned matter without oral argument and for such other and further relief as is just and proper.

Respectfully submitted,

s/ Mitchell Willoughby
Mitchell Willoughby, Esquire
Andrew J. D'Antoni, Esquire
WILLOUGHBY & HOEFER, P.A.
930 Richland Street (29201)
PO Box 8416
Columbia, SC 29202-8416
Phone: (803) 252-3300
Fax: (803) 256-8062
mwilloughby@willoughbyhoefer.com
adantoni@willoughbyhoefer.com

*Attorneys for Charter Communications,
LLC & Charter Fiberlink-SC CCO, LLC*

Columbia, South Carolina
October 2, 2020